

IN THE MATTER OF

*

BEFORE THE

JOSE R. REYES

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COMMISSIONER OF

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FINANCIAL REGULATION

Applicant

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OAH NO.: DLR-CFR-76B-10-00163

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OPINION AND FINAL ORDER

INTRODUCTION

This matter came before the Deputy Commissioner of Financial Regulation (the “Deputy Commissioner”) for argument on exceptions (“Applicant”) to the Proposed Order of April 21, 2010 issued by the Commissioner of Financial Regulation (the “Commissioner’s Proposed Order”). On April 12, 2010, Administrative Law Judge Laurie Bennett (the “ALJ”) issued a Proposed Decision in which she recommended that the Applicant’s renewal application for a mortgage originator license be denied. The Commissioner’s Proposed Order adopted the ALJ’s Proposed Decision in its entirety. Applicant requested a hearing on exceptions.

A hearing on Applicant’s exceptions to the Commissioner’s Proposed Order was held before the Deputy Commissioner on July 12, 2010. Applicant appeared on his own behalf and presented arguments. Kris King, Assistant Attorney General, presented arguments on behalf of the Office of the Commissioner of Financial Regulation (“CFR”). The proceedings were recorded.

The record before the Deputy Commissioner at the exceptions hearing consisted of:

1. The ALJ’s Proposed Decision;
2. The Commissioner’s Proposed Order;
3. Applicant’s request for an Exceptions Hearing;

4. The Exceptions Hearing Notice; and
5. All exhibits admitted into the record in the hearing below before the ALJ.

FINDINGS OF FACT

The Deputy Commissioner adopts the ALJ's Findings of Fact.

CONCLUSIONS OF LAW

The Deputy Commissioner adopts the ALJ's Conclusions of Law.

DISCUSSION

A. Background

This case arose from the denial by CFR of a renewal application for a mortgage originator license submitted by Applicant to CFR in October 2009. Applicant was originally granted a mortgage originator license by CFR on or about April 2, 2007. The law requiring licensure of mortgage originators became effective January 1, 2007. (Prop. Dec.¹ at 4-5.) As part of the application process in April 2007, Applicant was required to submit fingerprints to the Criminal Justice Information System for a background check. Applicant was provided fingerprint cards by CFR for this purpose. (Prop. Dec. at 5.) Although CFR had not received the results of Applicant's criminal background check, it appears that due to backups resulting from the large number of initial licensees, CFR granted a license to Applicant in April 2007 with the intention it would review Applicant's background check when it came in and if necessary take action to revoke the license. (Prop. Dec. at 5.) There is no evidence that CFR ever received or reviewed Applicant's background check in connection with the 2007 license.

Applicant applied for a renewal mortgage originator license in October 2009. As part of that process CFR received a criminal background check on Applicant which

¹ "Prop. Dec." refers to the ALJ's Proposed Decision.

showed that he was convicted of second degree murder in 1982. CFR also received a credit report that indicated Applicant has a poor credit history. (Prop. Dec. at 5.) On or about December 10, 2009, CFR denied Applicant's renewal application stating as its reason that Applicant "had not demonstrated financial responsibility, character, and general fitness sufficient to command the confidence of the community and to warrant a determination that he would operate as a mortgage loan originator in an honest, fair and efficient manner." Applicant had been affiliated with Premier Financial Funding, but as of the date of the hearing below had not worked since CFR denied him a renewal license. (Prop. Dec. at 5.)

Applicant was convicted of second degree murder 1982 and sentenced to thirteen years incarceration. Applicant killed his former girlfriend by shooting her with a .22 caliber pistol. (Prop. Dec. at 3.) Applicant was paroled for this conviction in April 1988.

Applicant's credit report showed a number of delinquencies and judgments, including:

- On or about September 28, 2009, the lessor of property where Applicant and another individual operated a business obtained a judgment against Applicant for approximately \$25,364.62 for unpaid rent.
- During 2002, Ford Motor Company repossessed Applicant's motor vehicle and obtained a judgment against applicant for approximately \$12,000. Applicant made approximately five payments on the judgment and still owes Forde Motor Company more than \$11,000.
- On dates not specified, Dabbs Chiropractic obtained two judgments against Applicant, one for \$735 and one for \$235.
- Applicant is in arrears to the creditor HSBC in the amount of \$728.
- Applicant is in arrears to the creditor Vintage Security, LLC, for a home security system.
- Applicant is in arrears to the creditor Directv in the amount of \$287.

- Applicant is in arrears to the creditor Comcast in the amount of \$169.

B. Applicant's Arguments on Exceptions

Applicant does not suggest that there were any errors of law in connection with the ALJ's Proposed Decision. Instead, Applicant continues to argue in exceptions what he argued in the hearing before the ALJ. First, that Applicant's conviction for second degree murder should not be considered by CFR in connection with his renewal application. Second, that Applicant's poor credit record is not his fault, but rather the result of the current distressed economic conditions, and so should also not be considered by CFR in connection with his renewal application.

We find Applicant's arguments unpersuasive. In connection with the second degree murder conviction, Applicant asserts that it should not have been considered by CFR in the application process because the conviction is many years old and because he has rehabilitated himself. In considering the issue of rehabilitation, the ALJ applied the criteria used by the Maryland Court of Appeals in considering whether attorneys who have been disbarred have been rehabilitated and should be reinstated. The court looks at the following four criteria: (i) The nature and circumstances of the original misconduct; (ii) the petitioner's subsequent conduct and reformation; (iii) his present character; and (iv) his present qualifications and character. (Prop. Dec. at 7) (citing *In re Braverman*, 271 Md. 196, 199-200 (1974) and *In re Barton*, 273 Md. 377, 379 (1974)).

In analyzing the question of whether the Applicant has been rehabilitated, the ALJ concluded he is not. (Prop. Dec. at 9.) In reaching this conclusion, the ALJ stated that as to the second degree murder conviction, she did "not believe that Applicant was entirely forthcoming in his testimony about the facts of the crime." (Prop. Dec. at 8.) We find

this lack of candor by Applicant troubling. In connection with the poor credit, the ALJ could not find that, despite Applicant's attempts to blame others for his credit defaults and judgments, that "indeed the Applicant was, time and again, the victim of someone else's mistakes. (Prop. Dec. at 8.) Moreover, the ALJ found that Applicant "has not made any recent effort to make a payment on any of the debts." (Prop. Dec. at 9.) The ALJ proffered that that she understood that Applicant "is not currently working since he lost his license and he truly may not have the financial means to make even small payments at this time, but some of the debts pre-dated the loss of his license when he was working and before the current recession." (Prop. Dec. at 9.) We find this behavior by Applicant to show a lack of financial responsibility. When considering the quality of the character-reference letter offered by Applicant, the ALJ questioned whether in obtaining it Applicant "truthful with [the individual offering it] about why he needed the letter." (Prop. Dec. at 9.) The ALJ concluded that the individual providing the character reference believed she was offering a reference letter in connection with a job search, not a license denial. (Prop. Dec. at 9.) As the ALJ noted, "a character reference is only as good as the information on which it is based. I have no indication whether [the reference] is aware of Applicant's criminal record and financial history and if that information would change her view of him." (Prop. Dec. at 9.) Again, this shows an apparent lack of candor on the part of Applicant.

The ALJ concluded that Applicant is not currently rehabilitated and, thus, the second degree murder conviction is "is still relevant to the Applicant's application for a mortgage originator's license and it provides a valid basis for the CFR to deny the

application.” (Prop. Dec. at 9.) The ALJ found also that Applicant has “not demonstrated financial responsibility” and that the evidence:

overwhelmingly establishes that the CFR properly denied his renewal application because the Applicant ‘has not demonstrated financial responsibility, character, and general fitness sufficient to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently.’ Md. Code Ann., Fin. Inst. § 11-605(a)(3) (Supp. 2009).

We note that the ALJ had the opportunity to observe the demeanor of Applicant, who testified before her. The ALJ based her conclusions regarding the rehabilitation and the financial responsibility of Applicant in significant part on the credibility of Applicant’s testimony. The Deputy Commissioner sees no reason to overturn these findings. This is consistent with the Court of Special Appeals holding that “where credibility is pivotal to the agency’s final order, the ALJ’s findings based on the demeanor of witnesses are entitled to substantial deference and can be rejected by the agency only if it gives strong reasons for doing so.” *Department of Health and Mental Hygiene v. Shrieves*, 100 Md. App., 283, 302 (1994). Likewise it is consistent with the Court of Appeals, which stated that:

On the matter of assessing the credibility of the witnesses the Court indicated that the agency should give appropriate deference to the opportunity of the examiner to observe the demeanor of the witnesses. All aspects of the witnesses['] demeanor—including the expression of his countenance, how he sits or stands, whether he is inordinately nervous, his coloration during critical examination, the modulation or pace of his speech and other non-verbal communication—may convince the observing [hearing officer] that the witness is testifying truthfully or falsely.

Anderson v. Department of Public Safety and Correctional Services, 330 Md. 187, 216 (1993) (citing *Penasquitos Village, Inc. v. N.L.R.B.*, 565 F.2d 1074, 1078-1079 (9th Cir.

1977)). In *Anderson*, the Court of Appeals further noted that “the review[ing] authority has the power to reject credibility assessments only if it gives strong reasons for doing so.” *Id.* at 217 (citing *Administrative law and Practice* (1985), Vol. 1, § 6.733 at 522). In the present case, the Commissioner finds no “strong reasons” for rejecting the ALJ’s assessment of Applicant’s credibility.

ORDER

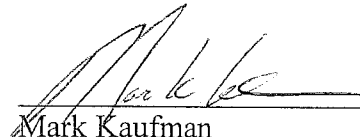
The Deputy Commissioner having considered Applicant’s exceptions and arguments in support thereof, it is:

ORDERED that Applicant’s renewal application for a mortgage loan originator license be, and hereby is, DENIED; and it is further

ORDERED that the records and publications of the Commissioner reflect this decision.

COMMISSIONER OF FINANCIAL REGULATION

9/13/10
Date

By: 
Mark Kaufman
Deputy Commissioner of Financial Regulation